UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
FORD, GRANT M

ART UNIT	PAPER NUMBER
2442	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/085,423	VELTEN ET AL.
	Examiner	Art Unit	
	GRANT FORD	2442	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 February 2010</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-11,13-16 and 21-33</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-11, 13-16 and 21-33</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

         1.☐ Certified copies of the priority documents have been received.

         2.☐ Certified copies of the priority documents have been received in Application No. _____.

         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of the Claims

1.   This communication is responsive to the remarks and amendments received

2/25/2010.

Claims 1 and 3-9 have been amended.

Claims 12 and 17 have been previously withdrawn.

Claims 27-33 have been newly added.

Claims 1-11, 13-16 and 21-33 are pending further examination.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 1-6, 9-11, 13-16, 21-22 and 25-33 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Bishop et al. (US 6,904,458), hereinafter referred to as Bishop,

in view of *Monitoring Your UPS With apcupsd*, hereinafter referred to as Facchetti.

a.   As per claim 1, Bishop discloses running an apparatus monitoring

program on a monitoring computer on the network (Col. 9 lines 14-25);

configuring a subordinate program with the monitoring program (Col. 9

lines 14-50 – note that application(s) to be installed to the client are subordinate to the

monitoring software of the computing component in that the computing component has complete access and control over the application(s) to be installed at the client both at time of installation and at run-time);

installing the configured subordinate program from the monitoring computer to a target computer on the network (Col. 9 lines 26-50);

transmitting a subordinate program instruction from the monitoring computer across the network to the target computer (Col. 9 lines 51-65); and

changing an operational characteristic of the target computer based on the subordinate program instruction (Col. 8 lines 1-15, Col. 9 lines 51-65). However, the prior art of Bishop fails to explicitly disclose wherein the operational status of the supporting apparatus is monitored with the monitoring program and generating from the monitoring program a subordinate program instruction based on the operational status of the supporting apparatus.

Facchetti teaches wherein the operational status of the supporting apparatus is monitored with the monitoring program and generating from the monitoring program a subordinate program instruction based on the operational status of the supporting apparatus (Page 3 Para. 1-2 – see apcupsd UPS monitoring, Page 4 – Running apcupsd - Para. 4-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of monitoring a supporting apparatus with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of monitoring the status of a UPS device, and permitting a

shut-down process if the monitoring program determines that the UPS has presented an alarm to the monitoring program (Page 4 – Running apcupsd – Para. 4-7).

b.　　　As per claim 2, Bishop and Facchetti teach the invention substantially as claimed above. However, the prior art of Bishop fails to explicitly disclose the monitoring computer receiving a message from the (supporting) apparatus.

Facchetti teaches the monitoring computer receiving a message from the supporting apparatus (Page 4 – Running apcupsd – Para. 4-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a monitoring computer receiving a message from a supporting apparatus with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of monitoring the status of a UPS device, and permitting a shut-down process if the monitoring program determines that the UPS has presented an alarm to the monitoring program (Page 4 – Running apcupsd – Para. 4-7).

c.　　　As per claim 3, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses the monitoring program detecting whether a shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

d.　　　As per claim 4, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses wherein the subordinate program instruction is a shutdown instruction if the shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

e.　　　As per claim 5, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses shutting down the target computer with the

subordinate program based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 51-65).

      f.   As per claim 6, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer by pushing the subordinate program to the target computer via the network (Col. 9 lines 26-51).

      g.   As per claim 9, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer by downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

      h.   As per claims 10 and 14, Bishop discloses a system comprising:

      a subordinate program configured by the monitoring program and adapted to be installed on the target computer by the monitoring program, the subordinate program adapted to receive a predetermined instruction and performing a shutdown routine of an affected target computer (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the claimed first through third routines associated with the monitoring program.

      Facchetti teaches a monitoring computer having a monitoring program and adapted to receive data from the apparatus, the monitoring program comprising:

      a first routine determining an alarm condition of the apparatus from the data (Page 4 – Running apcupsd – Para. 4), a second routine determining a target

computer on the network effected by the alarm condition of the apparatus (Page 4 –

Running apcupsd – Para. 5-7, Page 5 – Networked Configuration – Para. 1-2, Listing 3-

4), and a third routine sending a predetermined shutdown instruction to the affected

target computer over the network (Page 4 – Running apcupsd – Para. 6-7). It would

have been obvious to one having ordinary skill in the art at the time the invention was

made to incorporate the use of detecting an alarm condition, a target computer affected

by the alarm condition, and sending a predetermined instruction to the affected target

computer over the network with the prior art of Bishop. One of ordinary skill in the art

would have done so for the purpose of allowing remote master control of computers

connected to a UPS, wherein the network master sends the UPS' alerts to the slave

allowing a master to send a shut down command to affected computer to ensure data

and hardware safety (Page 4 – Running apcupsd – Para. 6).

     i.   As per claims 11 and 16, Bishop and Facchetti teach the invention

substantially as claimed above. However, Bishop fails to explicitly disclose wherein the

apparatus is a UPS. Facchetti teaches wherein the apparatus is a UPS (Page 3 Para. 1,

Page 4 – Running apcupsd – Para. 4). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to incorporate the use of

monitoring an attached UPS device with the prior art of Bishop. One of ordinary skill in

the art would have done so for the purpose of providing remote UPS monitoring and in

the event of an alarm, providing means for shutting down affected computers which are

supported by the same UPS (Page 4 – Running apcupsd – Para. 4, 6).

j.   As per claims 13 and 15, Bishop and Facchetti teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

k.   As per claim 21, Bishop discloses a system comprising:

a monitoring computer and a target computer (Figure 1, Col. 9 lines 26-50);

a network coupling the monitoring computer and the target computer (Figure 1);

a monitoring computer adapted to configure a subordinate program to be installed over the network on a target computer by the monitoring program and install the subordinate program on the target computer over the network (Col. 9 lines 26-50);

the target computer comprising an installed subordinate program and adapted to receive a network message including a shutdown instruction and shut down the target computer based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the UPS and receiving and determining steps performed by the monitoring computer as claimed.

Facchetti teaches a monitoring program adapted to receive a network message including data from the UPS (Page 4 - Running apcupsd - Para. 4), determine an alarm condition of the UPS from the data in the message (Page 4 - Running apcupsd - Para. 4), and determine a computer on the network affected by the alarm condition of

the UPS (Page 4 - Running apcupsd - Para. 5-7, Page 5 – Networked Configuration –

Para. 1-2, Listings 3-4), wherein the UPS sends a shutdown instruction (Page 4 -

Running apcupsd - Para. 4, 6). It would have been obvious to one having ordinary skill

in the art at the time the invention was made to incorporate the use of detecting an

alarm condition, a target computer affected by the alarm condition, and sending a

predetermined instruction to the affected target computer over the network with the prior

art of Bishop. One of ordinary skill in the art would have done so for the purpose of

providing a UPS management software which monitors a locally attached UPS device

for alarm conditions, and in the event of an alarm, functions to provide a shutdown

function on computers which are all supported by the same UPS (Page 4 - Running

apcupsd - Para. 4, 6).

     l.   As per claim 22, Bishop and Facchetti teach the invention substantially as

claimed above. Bishop additionally discloses wherein installing the subordinate program

from the monitoring computer to the target computer comprises pushing the subordinate

program to the target computer via the network (Col. 9 lines 26-51).

     m.   As per claim 25, Bishop and Facchetti teach the invention substantially as

claimed above. Bishop additionally discloses wherein the subordinate program

comprises portable code (Col. 6 lines 61-67).

     n.   As per claim 26, Bishop and Facchetti teach the invention substantially as

claimed above. Bishop additionally discloses wherein the subordinate program has

default configuration parameters that may be reset during installation on the target

computer (Col. 9 lines 33-37 - see configuration parameters reset upon boot).

o.   As per claim 27, Bishop and Facchetti teach the invention substantially as claimed above. However, the prior art of Bishop fails to explicitly disclose wherein monitoring the operational status of the apparatus comprises sending and receiving messages across a dedicated communication link between the monitoring computer and the apparatus.

Facchetti teaches wherein monitoring the operational status of the apparatus comprises sending and receiving messages across a dedicated communication link between the monitoring computer and the apparatus (Page 4 - Running apcupsd – Para. 4-6, Page 5 – Networked Configuration – Para. 1-2, Listings 3-4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dedicated communication links between the monitoring computer and the apparatus with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of implementing a remote master computer for monitoring the status of the UPS (Page 4 – Running apcupsd – Para. 5-6, Page 5 – Networked Configuration Para. 1-2).

p.   As per claim 28, Bishop and Facchetti teach the invention substantially as claimed above. However, the prior art of Bishop fails to explicitly disclose wherein monitoring the operational status of the apparatus comprises sending and receiving messages across the network between the monitoring computer and the apparatus.

Facchetti teaches wherein monitoring the operational status of the apparatus comprises sending and receiving messages across the network between the monitoring computer and the apparatus (Page 4 - Running apcupsd – Para. 4-6, Page 5

– Networked Configuration – Para. 1-2, Listings 3-4). It would have been obvious to one

having ordinary skill in the art at the time the invention was made to incorporate the use

of sending and receiving messages across the network between the monitoring

computer and apparatus with the prior art of Bishop. One of ordinary skill in the art

would have done so for the purpose of implementing a remote master computer for

monitoring the status of the UPS (Page 4 – Running apcupsd – Para. 5-6, Page 5 –

Networked Configuration Para. 1-2).

      q.   As per claim 29, Bishop and Facchetti teach the invention substantially as

claimed above. However, the prior art of Bishop fails to explicitly disclose generating

from the monitoring program a monitoring computer instruction based on the operational

status of the supporting apparatus.

              Facchetti teaches generating from the monitoring program a

monitoring computer instruction based on the operational status of the supporting

apparatus (Page 3 Para. 1, Page 4 – Running apcupsd – Para. 4-7). It would have been

obvious to one having ordinary skill in the art at the time the invention was made to

incorporate the use of generating from the monitoring program a monitoring computer

instruction based on the operational status of the supporting apparatus with the prior art

of Bishop. One of ordinary skill in the art would have done so for the purpose of

detecting a status alert from a UPS and sending the alert to slave computers (Page 4 –

Running apcupsd – Para 4,6).

r.   As per claim 30, Bishop and Facchetti teach the invention substantially as claimed above. However, the prior art of Bishop fails to explicitly disclose wherein the monitoring instruction of claim 29 is a monitoring computer shutdown instruction.

Facchetti teaches wherein the monitoring computer instruction is a monitoring computer shutdown instruction (Page 4 - Running apcupsd - Para. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a monitoring computer shutdown instruction with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of issuing a remote shutdown instruction in the event that a master computer receives an alert from a UPS in order to ensure data and hardware safety (Page 4 - Running apcupsd - Para. 6).

s.   As per claim 31, Bishop and Facchetti teach the invention substantially as claimed above. However, the prior art of Bishop fails to explicitly disclose wherein running the subordinate program comprises running the subordinate program in the background of the target computer.

Facchetti teaches wherein running the subordinate program comprises running the subordinate program in the background of the target computer (Page 3 Para. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a background subordinate program with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of running the monitoring as a an operating system service in the background

with root privileges in order to be able to take the actions needed to keep the computer

healthy (Page 3 Para. 2).

t.   As per claim 32, Bishop and Facchetti teach the invention substantially as

claimed above. However, the prior art of Bishop fails to explicitly disclose wherein

running the subordinate program in the background of the target computer does not

provide a target computer user interface.

Facchetti teaches wherein running the subordinate program in the

background of the target computer does not provide a target computer user interface

(Page 3 Para. 2). It would have been obvious to one having ordinary skill in the art at

the time the invention was made to incorporate the use of a background daemon

monitoring process with the prior art of Bishop. One of ordinary skill in the art would

have done so for the purpose of running the monitoring as a an operating system

service in the background with root privileges in order to be able to take the actions

needed to keep the computer healthy (Page 3 Para. 2).

u.   As per claim 33, Bishop and Facchetti teach the invention substantially as

claimed above. Bishop additionally discloses accessing the subordinate program on the

target computer across the network from the monitoring computer (Col. 9 lines 14-25).

4.   Claims 7-8 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Bishop and Facchetti in view of *VERITAS WinINSTALL 2000*, hereinafter referred

to as Veritas.

a.   As per claims 7-8, Bishop and Facchetti fail to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer is done by installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop and Facchetti. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

b.   As per claims 23-24, Bishop and Facchetti teach the invention substantially as claimed above. However, Bishop and Facchetti fail to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, and emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop and Facchetti. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

Response to Arguments

5.   Applicant's arguments, filed 2/25/2010, with respect to the prior art of USV failing to explicitly teach identifying a target computer wherein the identified target computers are shut down, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Facchetti, as outlined above.

Conclusion

6.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to GRANT FORD whose telephone number is (571)272-

8630. The examiner can normally be reached on 8-5:30 Mon-Thurs alternating Fridays.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Philip Lee can be reached on (571)272-3967. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. F./
Examiner, Art Unit 2442

/Philip C Lee/
Acting Supervisory Patent Examiner, Art Unit 2442